

IT IS ORDERED

Date Entered on Docket: November 15, 2018



The Honorable David T. Thuma  
United States Bankruptcy Judge

---

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In Re:

Daniel DeVargas

Debtor

Case No. 18-12394

Chapter 7

---

**DEFAULT ORDER GRANTING MOTION FOR RELIEF FROM STAY AND TO  
ABANDON PROPERTY LOCATED AT 1633 LARK SPUR DRIVE NE, RIO RANCHO,  
NEW MEXICO 87144**

This matter came before the Court on the Motion for Relief from Automatic Stay and to Abandon Property filed on October 16, 2018, Docket No. 14 (the "Motion") by U.S. Bank National Association ("Movant"). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed, FINDS:

1. On October 16, 2018, Movant served the Motion and a notice of the Motion (the "Notice") on the case trustee, Philip J Montoya ("Trustee"), and on Debtor('s/s') counsel, Gary Lakin, by use of the Court's case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on Debtor(s) by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

2. The Motion relates to the property known as 1633 Lark Spur Drive NE, Rio Rancho, New Mexico 87144 (the "Property") with a legal description:

Lot numbered Two (2) in Block numbered Four (4), North Hills Unit 7, as the same is shown and designated on the plat entitled, "NORTH HILLS UNIT 7, A SUBDIVISION OF A PORTION OF TRACT "A" IN NORTH HILLS SUBDIVISION, AND A REPLAT OF A PORTION OF LOT 146 IN BLOCK 32 OF UNIT TWELVE, CITY OF RIO RANCHO, TOWN OF ALAMEDA GRANT, SANDOVAL COUNTY, NEW MEXICO", filed in the office of the County Clerk of Sandoval County, New Mexico, on November 21, 1989 in Rio Rancho Estates Plat Book Number 5, Pages 109-111 (Vol. 3, Folio 8090-A), Instrument No. 45544.

3. The Notice specified an objection deadline of (21) twenty-one days from the date of service of the Notice, to which 3 days was added under Bankruptcy Rule 9006(f);

4. The Notice was sufficient in form and content;

5. The objection deadline expired on November 9, 2018;

6. As of November 12, 2018 neither Debtor(s) nor Trustee, nor any other party in interest, filed an objection to the Motion;

7. The Motion is well taken and should be granted as provided herein; and

8. By submitting this Order to the Court for entry, the undersigned counsel for Movant certifies under penalty of perjury that, on November 12, 2018, Patricia Rychards of Weinstein & Riley, P.S. searched the data banks of the Department of Defense Manpower Data Center ("DMDC") and found that DMDC does not possess any information indicating that Debtor(s) is/are currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. Pursuant to 11 U.S.C. §362(d), Movant and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

a. To enforce their rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements and/or other agreements to which Debtor(s) is/are a party, to the extent permitted by

applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against Debtor(s) or the Property, or both, in any court of competent jurisdiction; and

b. To exercise any other right or remedy available to them under law or equity with respect to the Property.

2. Trustee is deemed to have abandoned the Property from the estate pursuant to 11 U.S.C. §554 as of the date of entry of this Order, and the Property therefore no longer is property of the estate. As a result, Movant need not name Trustee as a defendant in any state court action it may pursue to foreclose liens against the Property and need not notify Trustee of any sale of the Property.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of Debtor(s), although Debtor(s) can be named as a defendant\defendants in litigation to obtain an *in rem* judgment or to repossess the Property in accordance with applicable non-bankruptcy law.

4. This Order does not waive Movant's claim against the estate for any deficiency owed by Debtor(s) after any foreclosure sale or other disposition of the Property. Movant may file an amended proof of claim for this bankruptcy case within 30 days after a foreclosure sale of the Property should it claim that Debtor(s) owe(s) any amount after the sale of the Property.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

6. This order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

7. Movant is further granted relief from the stay to engage in loan modification discussions or negotiations or other settlement discussions with Debtor(s) and to enter into a loan modification with Debtor(s).

XXX END OF ORDER XXX

Submitted by:

/s/ Jason Bousliman

Jason C. Bousliman, SBN 14830  
5801 Osuna Rd. NE, Suite A-103  
Albuquerque, NM 87109  
Telephone: 505-348-3204  
Facsimile: 505-214-5116  
E-mail: JasonB@w-legal.com  
Attorney for Movant

Copies to:

Daniel D Devargas  
1633 Lark Spur Drive Ne  
Rio Rancho, NM 87144

Gary Lakin  
6727 Academy Rd NE Ste B  
Albuquerque, NM 87109-3369

Philip J. Montoya  
Trustee  
1122 Central Ave SW Ste #3  
Albuquerque, NM 87102

United States Trustee  
PO Box 608  
Albuquerque, NM 87103-0608